

RE: Skykomish BNSF Cleanup Compliance Issues/ 2-10-2008 email

From: **Cate Riley** (criley@investorspropertieservices.com)
Sent: Mon 3/17/08 10:29 AM
To: Petrovich, Brad (ECY) (bpet461@ecy.wa.gov)
Cc: Sato, Brian (ECY) (bsat461@ecy.wa.gov); Bardy, Louise (ECY) (lbar461@ecy.wa.gov); Warren, Bob (ECY) (rwar461@ecy.wa.gov)
Bcc: Anne Sekor (asekor@w-link.net); Kristie Carevich (kristiec@atg.wa.gov)

Brad,

Thank you for your response. Unfortunately, the hope that your email would answer my concerns and questions fell far short of the mark.

Now that Ecology has switched out its 'team', I believe it imperative that continuing attempts to lie in an effort to rewrite history be stopped in the interest of moving forward. Mr. Sato and Mr. Warren, please pay particular attention.

As the parties, specifically Tim Nord, Louise Bardy, Bruce Sheppard and Craig Trueblood, are well aware, Hotel owners have never refused access to BNSF Railway to 'commence the cleanup on the hotel property.'

Louise, the statement contained in your email of February 26, 2008, that 'Hotel owners refused access in 2007 to begin cleanup work on the Hotel property' is an outright lie. **Specific question requiring an answer:** Why is this lie being promoted?

WSDOE and BNSF continue to stonewall on commitments to pay legal costs of parties electing to enter into discussions regarding the cleanup. Hotel owners relied, in good faith, on such commitments by WSDOE and BNSF when they retained legal counsel necessary to properly respond to BNSF requests.

BNSF refuses even to respond to requests for payment. Once they fulfill their commitment to pay such fees and make satisfactory arrangement for payment of future fees which they may cause us to incur, we can proceed to substantive discussions regarding access and other issues they may have.

BNSF has never sought in good faith to arrange for Hotel access with owners having the benefit of legal counsel. It remains clear that WSDOE and BNSF do not want Hotel owners to be represented by legal counsel and are continuing to do everything possible, including lying, to prevent such from occurring.

What Hotel owners did refuse to do was sign the conditional point of compliance letter that Tim Nord tried so very hard, on his drive to his vacation and again on his return trip from his vacation, to coerce Mr. Benz into signing without benefit of legal counsel.

Mr. Nord stated that it was not relevant to any other issues regarding this cleanup, clearly another blatant lie on the part of Ecology.

The cleanup plan was not re-written because of Hotels owners' refusing access, but because Ecology, in its arrogance, assumed that all the little sheep would sign this document without benefit of legal counsel.

Hotel owners, as always, remain ready to discuss access with BNSF Railway. A review of Ms. Bardy's emails from Hotel owners will confirm this.

Ecology continues lobbying for a meeting with it (and its legal counsel), along BNSF Railway (and its legal counsel and other representatives), and Hotel owners (without the benefit of their legal counsel) to discuss Hotel access and other concerns. As WSDOE maintains such discussions are strictly between BNSF and individual property owners and businesses, we respectfully request that BNSF manage its own affairs and that WSDOE mind its own business.

Specific question requiring an answer: Why is Ecology insistent that Hotel owners be engaged in complex legal discussions with serious repercussions without benefit of legal counsel, while WSDOE and BNSF remain lawyered up?

While It is easier for the parasitic bully to attempt to squash the little bug rather than the big corporation that it has been feeding off these many years, no amount of lying or subterfuge will make this right. In reviewing the Consent Decree and supporting documents, it is clear that the State of Washington is receiving millions of dollars from this perpetrator... and that's only what one sees above board.

Ecology representatives state it has required BNSF Railway to obtain access agreements with property owners. **Specific question requiring an answer:** What is WSDOE doing to enforce that requirement?

Ecology's communications and publications are contradictory. On one hand, they are requiring this action. On the other hand, when pressed to act on their requirement and, further to do their job as government officials responsible for representing the People of the State of Washington, the response is 'we can't make BNSF Railway do anything.' If you can't do anything, then get out of the way. Your fingers are too deep into this pie to pretend that you weren't even at the scene of the crime.

It's time that the State of Washington got out of the perpetrator's bed, stand on its own two feet and begin doing its job in representing the People of the State of Washington.

I am forwarding my original requests of Ms. Bardy which remain unanswered (highlighted in red below) and respectfully request a cogent, timely and responsive reply to these and all other questions contained in this email.

Thank you.

Cate Riley

*Designated Broker
Investors Property Services Llc
Voice & Fax After Tone: 888.237.8992, Ext. 6*

Our main concern is that BNSF has failed to even contact us regarding any anticipated actions that could impact Hotel property. *Will Ecology once again stand by and watch as this corporation wreaks further havoc on our small town, its economy and particularly on this property, its owners and occupants? Ecology, in the final Consent Decree and supporting documents, purports to commit itself to the full and satisfactory restoration of the properties and their owners in Skykomish. However, Ecology's actions speak volumes to the contrary.*

We also note that Weekly Progress Report comments regarding access to Hotel property ceased approximately one month prior to the Consent Decree being entered and this absence continues to the present. Has some decision been made with regard to impacting or accessing Hotel property that has yet to be conveyed to Hotel owners? *I don't know of any. Hotel owners refused access in 2007 to begin cleanup work on the Hotel property. (This is a lie.) Based on that (this is a lie), the cleanup plans had to be rewritten to accommodate that situation. That is the last we know (Is this also a lie?).*

I note with interest that the Guidelines for Relocation refer to relocating residents. What provision has been made for relocating businesses and occupants in the commercial district during such time as the buildings are impacted or relocated? *Louise: The Environmental Impact Statement begins the discussion of relocating businesses. Each business is unique and will need to work out its own specific plan with BNSF. Also, the Chamber of Commerce has regrouped to help address business concerns, and is working closely with Ecology and EnviroIssues. Not only do Hotel owners have business operations and tenants in the commercial units, Mr. Benz' personal residence is located in the Hotel. He has yet to be contacted regarding relocation or more importantly, assurance as to prevention of physical damage to the Hotel and Mr. Benz' home when work is commenced on Railroad Avenue and nearby properties. What is Ecology doing to ensure the Mr. Benz is not in any way prevented from making normal and customary use of his home and that he is protected against negligence on the part of Ecology, BNSF Railway, contractors, sub-contractors and any other parties, which negligence could result in any negative impact on Mr. Benz' property, his person, and/or his ability to make normal and customary use thereof.*

When is BNSF scheduled to begin construction in the vicinity of 5th Street and Railroad Avenue East? Contractors will be mobilizing to the site in May but the exact construction schedule is dependent on the contractor bid process which begins this month. The specific start dates have not been determined. In as much as this work may negatively affect operations and/or access to Hotel property, we expect BNSF to provide satisfactory solutions. Although the List and Schedule of Deliverables stated a draft structural survey of the Hotel is not expected until October 2009, any work in this vicinity that impacts Hotel operations or access must be resolved prior to onset of work. *Louise: Ecology requires that the cleanup be conducted by BNSF. The Hotel needs to discuss its concerns directly with BNSF. Does this mean that Ecology makes a requirement but then walks away from any enforcement and responsibility for the safety of persons who may be injured or killed as the result of non-performance and/or negligence of the entity so required?*

What actions is Ecology taking to ensure that BNSF is contacting and arranging for access with the affected property owners? *Louise: Ecology has had many discussions with BNSF, consultants, attorneys, the town and the affected properties (Cate's note: not with Hotel owners) for 2008 on this issue. Although Ecology cannot be involved with access negotiations (Cate's note: Another lie: Tim Nord stated Ecology would participate in access negotiations), it has consistently met with individual property owners (Cate's note: not with Hotel owners) to stay in touch with their concerns over cleanup issues. Also, Ecology has contracted with several mediators to assist if mediation is needed. It is not enough that Ecology will make available mediation services. As a governmental agency for the people, Ecology needs to be riding herd to prevent the very occurrence of situations that might actually require future mediation. Louise: In addition to meeting with individual property owners, Ecology has been attending every Town Council, Design Review Board, School Board, and Chamber of Commerce meeting in order to keep people apprised of issues resulting from cleanup activities, and to make sure their concerns are addressed as we move forward with the schedule. Despite best efforts, Ecology can only be available to the public and cannot force people to participate in the process. If they choose not to participate, or to negotiate with BNSF, mediation may be necessary for them. First: BNSF would have to attempt in good faith to negotiate in order to elicit any*

ponse from a property owner before it is determined that such owner is refusing to negotiate. No such good faith attempt has been made by BNSF Railway with Hotel owners. This will be established in future proceedings by legal counsel. Second, I would expect that mediation would not be discussed until such time as BNSF Railway, the perpetrator supposedly required to take certain actions, has in good faith attempted to negotiate with property owners. What actions are being taken by Ecology to enforce its requirements of the perpetrator in as much as BNSF Railway is refusing to perform as required?

Cate Riley

Designated Broker

Investors Property Services Llc

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Subject: FW: Skykomish BNSF Cleanup Compliance Issues/ 2-10-2008 email
Date: Wed, 12 Mar 2008 15:37:17 -0700
From: bpet461@ECY.WA.GOV
To: criley@investorspropertyservices.com
CC: BSAT461@ECY.WA.GOV; LBAR461@ECY.WA.GOV; rwar461@ECY.WA.GOV;
KristieC@ATG.WA.GOV; tnor461@ECY.WA.GOV; dhoo461@ECY.WA.GOV;
townofsky@worldnet.att.net; Bruce.Sheppard@bnsf.com; athomson@enviroissues.com

Hello Cate,

Louise is out of the office this week, but in the interest of getting you a timely response to your inquiry today, I wanted to get back to you on this matter. It appears that the response Louise sent you on 2-26 went to an old email address (criley@investpm.com) that is no longer viable. I am including that email below, which includes our responses to your email dated 2-10, in blue text. We hope they help to answer your concerns and questions regarding cleanup work in Skykomish.

Secondly, I wanted to reiterate Ecology's proposal to meet with you and BNSF to clarify the cleanup work that will happen in 2008 and the impacts to the Town. Although the cleanup is being conducted by BNSF and its contractors, and it is BNSF's responsibility to obtain access to private property in order to implement the cleanup, Ecology will help facilitate agreement on access and is committed to engaging all citizens and businesses of Skykomish in the cleanup effort. Toward that end, Louise provided you a list of potential dates for a meeting. We remain available to meet with you at your earliest convenience.

Finally, you will be receiving a copy of the Skykomish Scoop Newsletter this week, which will announce the first of two public meetings in Skykomish to address the 2008 cleanup work. It will

be on March 19, from 6-8pm, in the Maloney General Store. This meeting will focus on construction activities and the impacts to the community, as well as an update on the Waste Water Treatment System. Please plan to attend to learn more about cleanup activities planned for this summer.

Best Regards,

Brad Petrovich

Dept. of Ecology

From: Bardy, Louise (ECY)
Sent: Tuesday, February 26, 2008 10:54 AM
To: Cate Riley
Cc: Sato, Brian (ECY); Warren, Bob (ECY); Petrovich, Brad (ECY)
Subject: FW: Skykomish BNSF Cleanup Compliance Issues
Importance: High

Hello Cate,

A quick update: The project team has changed. I am no longer the project coordinator for this site. Brian Sato (425) 649-7265) is the new coordinator. Bob Warren (425-7054) is the new agency management lead for Tim Nord. Brad Petrovich (360) 790-9959 is the new public outreach coordinator for Susan Lee.

Below are replies in color that we hope address your questions. We understand your concerns regarding the upcoming cleanup work in 2008, and are available to meet with you (and BNSF together if you would like) to discuss access and cleanup issues related to the Hotel property. We are happy to send you the 2008 Engineering Design Report. Please let me know your mailing address.

Best Regards,

Louise

Louise Bardy
Toxics Cleanup Program
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(425) 649-7209
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From: Cate Riley [mailto:criley@investorspropertyervices.com]
Sent: Tuesday, February 19, 2008 10:07 AM
To: Bardy, Louise (ECY)
Subject: Skykomish BNSF Cleanup Compliance Issues

Louise,

As you know, I am the managing agent for the Skykomish Hotel.

I must again restate my disappointment over the fact that Ecology has turned over to BNSF Railway the duty of determining whether the Hotel can be relocated to allow for the full clean up under the building (see CAP, Chapter 4 – Site Remedy, Section 4.1.2.2., page 21). As you recall, when I initially expressed our concern and disagreement on this with you after reviewing the Draft Cleanup Action Plan, your response was this meant they were paying for it. However, that is not what is granted as it is worded in the CAP. Ecology has chosen to once again place the fox in charge of the henhouse.

It is also unbelievable that among all of the extremely vague Responses to the Comments submitted by us, our concern over this issue was not even addressed much less resolved.

In the final analysis, it is already known that the building can economically be lifted and moved based upon a structure's moving report and the fact that it was previously lifted and replaced without damage. We expect the building to be relocated and a full clean up to occur on the property.

In reviewing the final Consent Decree and the Cleanup Action Plan, we have several concerns regarding scheduled activities in the NWDZ. It appears that the BNSF is scheduled to begin major road and rail yard construction this year which may impact Skykomish Hotel property, structure, operations, businesses and occupants. As you know we have office, warehouse and flex space leased with three companies doing business out of that location. Additional space will become available for lease during the next 90 days. Full access to the property must be maintained at all times. A wedding event is also scheduled at the property from June 15-29. Guests, including political dignitaries, will be in attendance. They must have full enjoyment of the property as well as complete access at all times.

Our main concern is that BNSF has failed to even contact us regarding any anticipated actions that could impact Hotel property. Will Ecology once again stand by and watch as this corporation wreaks further havoc on our small town, its economy and particularly on this property, its owners and occupants? Ecology, in the final Consent Decree and supporting documents, purports to commit itself to the full and satisfactory restoration of the properties and their owners in Skykomish. However, Ecology's actions speak volumes to the contrary.

We also note that Weekly Progress Report comments regarding access to Hotel property ceased approximately one month prior to the Consent Decree being entered and this absence continues to the present. Has some decision been made with regard to impacting or accessing Hotel property that has yet to be conveyed to Hotel owners? [I don't know of any. Hotel owners refused access in 2007 to begin cleanup work on the Hotel property. Based on that, the cleanup plans had to be rewritten to accommodate that situation. That is the last we know.](#)

Please respond to the following:

1. What is the deadline by which BNSF is required to have in place an agreement for economic impact, access, relocation and clean up of Hotel property? [Deadline for access agreement, relocation and cleanup of the Hotel property is December 31, 2009. There is no deadline for agreement on economic impact since this is a private discussion involving settlement between parties and is not covered under the MTCA regulation.](#) In as much as this may require considerable negotiation, we need to be assured they will have sufficient time to do so. Pursuant to the List and Schedule of Deliverables, Exhibit C to the Consent Decree, BNSF was to have in place access documentation for properties to be affected in the 2008 work schedule. The Deliverables mentioned for 2008 include a lot of 'draft' this and 'final' that but does not state what actual work, if any, is scheduled to occur.

2. I note with interest that the Guidelines for Relocation refer to relocating residents. What provision has been made for relocating businesses and occupants in the commercial district during such time as the buildings are impacted or relocated? [The Environmental Impact Statement begins the discussion of relocating businesses. Each business is unique and will need to work out its own specific plan with BNSF. Also, the Chamber of Commerce has regrouped to help address business concerns, and is working closely with Ecology and EnviroIssues.](#)

3. When is BNSF scheduled to begin construction in the vicinity of 5th Street and Railroad Avenue East? [Contractors will be mobilizing to the site in May but the exact construction schedule is dependent on the contractor bid process which begins this month. The specific start dates have not been determined.](#) In as much as this work may negatively affect operations and/or access to Hotel property, we expect BNSF to provide satisfactory solutions. Although the List and Schedule of Deliverables stated a draft structural survey of the Hotel is not expected until October 2009, any work in this vicinity that impacts Hotel operations or access must be resolved prior to onset of work. [Ecology requires that the cleanup be conducted by BNSF. The Hotel needs to discuss its concerns directly with BNSF.](#)

4. What is the requirement for BNSF to maintain access to and from properties in the vicinity of 5th Street and Railroad Avenue East? The construction plans describe maintaining access. It will be limited at times for safety or other unavoidable reasons. Ecology is currently reviewing and discussing the Construction Plans and Specs with BNSF that describe the work. The 5th Street access is still under discussion. The final document and subsequent documents will describe access plans in more detail.
5. What actions is Ecology taking to ensure that BNSF is contacting and arranging for access with the affected property owners? Ecology has had many discussions with BNSF, consultants, attorneys, the town and the affected properties for 2008 on this issue. Although Ecology cannot be involved with access negotiations, it has consistently met with individual property owners to stay in touch with their concerns over cleanup issues. Also, Ecology has contracted with several mediators to assist if mediation is needed. It is not enough that Ecology will make available mediation services. As a governmental agency for the people, Ecology needs to be riding herd to prevent the very occurrence of situations that might actually require future mediation. In addition to meeting with individual property owners, Ecology has been attending every Town Council, Design Review Board, School Board, and Chamber of Commerce meeting in order to keep people apprised of issues resulting from cleanup activities, and to make sure their concerns are addressed as we move forward with the schedule. Despite best efforts, Ecology can only be available to the public and cannot force people to participate in the process. If they choose not to participate, or to negotiate with BNSF, mediation may be necessary for them.
6. Provide me with an explicit Schedule of Deliverables or other document reflecting what actual work will occur and when it is expected to occur. The documents provided do not give complete or accurate information on what the property owners can expect. The explicit schedule is the Consent Decree Exhibit C Schedule of Deliverables. A detailed schedule will be developed after the contractor is selected. Work is expected to begin in May and last through the summer into the early fall. The Hydraulic Control and Containment System will be installed first followed by excavation of the 2 residences. Then restoration will occur, including installation of the wastewater treatment infrastructure. The official documents are: The Master

Engineering Design Report; 2008 Engineering Design Report; Construction Plans and Specifications; Compliance Monitoring Plan; Public Participation Plan. Other important documents are the Hydraulic Control and Containment Special Design Report, Technical Execution Plan and Noise, and Air Monitoring Plan. Copies of these documents are in the Skykomish repositories or will be as soon as they are finalized.

Lastly, as you also know, BNSF continues to renege on publicly stated promises by Mr. Bruce Sheppard to pay legal fees for all affected property owners who elected to enter into discussions and/or negotiations with it. Our legal counsel has been sidetracked until payment, not only of amounts already incurred but a further retainer for future services, is made as promised by BNSF. Therefore, all communications regarding this matter are to be directed to me as managing agent for the Hotel.

I would appreciate a prompt, cogent and complete response to my above inquiries. I once again request Ecology begin acting as the agent for the people of the State of Washington, as is its duty and responsibility, rather than for those it is charged with overseeing.

Respectfully submitted,

Cate Riley

Designated Broker

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